Public Comment Responsiveness Summary

Total Maximum Daily Loads for Sediment
and Monitoring and Implementation Recommendations
San Diego Creek and Newport Bay, California

U.S. Environmental Protection Agency
Region 9
April 13, 1997

Comment 1: California Regional Water Quality Control Board, Santa Ana Region

Comment 1.1: The Santa Ana Regional Water Quality Control Board (RWQCB) believes that a depth target for maintaining the marine aquatic habitat beneficial uses in Upper Newport Bay is appropriate, and recommends that the final TMDL apply the same minimum depth target to the Unit 2 sediment basin as well as the Unit 1 basin. The existing sediment control plan already in place includes the minimum depth requirement for both Unit 1 and Unit 2.

Response: We agree. The TMDL has been modified to apply the minimum depth numeric target for Upper Newport Bay sediment basins to both Unit 1 and Unit 2 in order to be consistent with the sediment control plan requirements and the proposed revisions to the RWQCB TMDL, and to provide additional protection measures for this important habitat area.

Comment 1.2: The wasteload allocations for both San Diego Creek and Newport Bay which apply to urban areas should be reduced to 2,500 tons per year each in order to ensure that the total allocations for the Creek and the Bay add up to 125,000 tons per year. While the rounding of allocations in the draft TMDL in the interests of avoiding false precision are technically valid, they have created much confusion. For clarity, it is important to establish TMDLs consistent with a 50% loading reduction from the best available estimate of current total loading.

Response: We agree, and apologize for any confusion the use of the 126,000 tons per year figure in the draft EPA TMDL may have created. The TMDLs have been revised to lower the wasteload allocations for urban areas to 2,500 tons per year for both the Newport Bay and San Diego Creek TMDLs. This change means that the TMDLs for both Newport Bay and San Diego Creek will each total 62,500 tons per year (a grand total of 125,000 tons per year), consistent with the target of a 50% total reduction in sediment loading from the best estimate of current loads. As the RWQCB notes, the change should not require any additional measures to be implemented to control urban sources of sediment.

Comment 2: County of Orange Public Facilities and Resources Department

Comment 2.1: EPA's sediment TMDL appears to be a fast-track effort designed to meet the consent decree obligations while minimizing public review, comment and discussion. EPA sent out notices of availability instead of complete documents. EPA's distribution list did not include County and City representatives that have been active in the sediment program and TMDL review process, some of whom did not receive the notices of availability. EPA did not discuss the TMDL with the sediment control committee. To remedy the lack of adequate pubic notice and opportunity for comment, the public comment period should be extended 30 days.

Response: We do not agree that the public comment period should be extended. Pursuant to its consent decree obligations, EPA is required to establish a final TMDL by April 15, 1998. EPA provided adequate opportunity for public review of the proposed TMDL consistent with federal public participation requirements established at 40 CFR 25 by:

- publishing a notice of availability of the proposed TMDL in the *Orange County Register* newspaper,

- requesting a copy of the Regional Water Quality Control Board mailing list used for prior TMDL public mailings and sending the notice of availability to the parties on the mailing list,

- sending copies of the proposed TMDL to parties who requested it from EPA, and

- preparing this responsiveness summary explaining how EPA considered comments received.

EPA did not send full copies of the proposed TMDLs to all parties on the mailing list because several hundred parties were listed and we wanted to avoid potential paper waste. Copies of the full TMDL report were mailed promptly to parties who requested the full document. We did verify with several parties on the mailing list that they received the notices of availability. We regret that the commenter was not on the mailing list provided to EPA by the RWQCB and will work with the RWQCB to ensure that the mailing list is more comprehensive in the future.

We note that the public has had extensive opportunity to review the RWQCB TMDL adopted in October 1997 and has had additional opportunities to review the revised RWQCB TMDL proposed in March for adoption on April 17, 1998. The EPA sediment TMDL is based on and identical in all key elements to the revised RWQCB TMDL. Therefore, we believe that through the EPA and RWQCB public review processes, the public has had adequate opportunity to review and comment on the sediment TMDLs.

Comment 2.2: The year of the consent decree appears to be wrong, or would otherwise represent an unrealistic schedule.

Response: The consent decree approval date is correct. The completion schedule reflected EPA's understanding that the RWQCB was already working on the sediment and nutrient TMDLs and had scheduled their completion in 1997.

Comment 2.3: It is unclear what EPA means by the adjective "clean" in describing sediment.

Response: We apologize for any confusion this terminology may have created. EPA used the term "clean" sediment for this TMDL to distinguish this sediment management situation from the problem of contaminated sediment usually associated with toxic pollutants which are attached to or bound up in sediment. We agree that other pollutants do adhere to sediments and recognize this is an issue of concern in the San Diego Creek/Newport Bay watershed with respect to phosphorous.

Comment 2.4: The figures are either not numbered, misnumbered, or are missing.

Response: The figure numbers have been corrected and references to figures which are not present have been deleted.

Comment 2.5: Tables 1 and 4 contain references to 125,000 tons while the report states later that the total loading capacity for the entire watershed was raised to 126,000 tons per year.

Response: See response to comment 1.2.

Comment 2.6: Some of the headwaters of the creeks appear to represent natural background sources since they are part of protected parkland. In particular, the naturally eroding area of "The Sinks" should be recognized as an uncontrollable source.

Response: We recognize that it may be possible to distinguish natural background sediment loading levels from some parts of the watershed from sources subject to anthropogenic influences. However, inadequate information was available for this TMDL analysis to characterize the locations or relative magnitude of naturally occurring sources and to establish separate load allocations for natural background. It may be possible and useful to distinguish natural, uncontrollable sources through future TMDL revisions by the RWQCB based on follow-up monitoring and source characterization efforts.

Comment 2.7: Table 2 should be clarified to state that the load allocations are to be achieved at the end of ten years.

Response: The EPA TMDL Report section concerning State implementation and monitoring plans (which are not part of the EPA TMDL) discusses and endorses the RWQCB's proposed 10 year attainment timeframe for the TMDL. It should be noted that NPDES permits affected by the wasteload allocations established in this TMDL must be established consistent with NPDES

permitting requirements, including requirements concerning compliance schedules. EPA hopes that the TMDL and associated targets can be attained sooner than 10 years through the continued aggressive implementation of sediment source control and management activities. EPA is not required to establish a specific implementation timeframe requirement as part of the TMDLs.

Comment 2.8: EPA provides no recognition of the aggressive program already implemented to address sediment issues in the basin.

Response: EPA recognizes that the Sediment Committee agencies have devoted substantial resources to sediment control activities and have made much progress in addressing sediment problems. The aggressive sediment management plan developed by the Sediment Committee in concert with the RWQCB, as supplemented by additional technical analysis, provides the basis for this TMDL.

Comment 2.9: All designated uses for San Diego Creek Reach 2 should be listed as intermittent, and lower Newport Bay also has a "comm" designation.

Response: We agree. The suggested changes were made.

Comment 2.10: The statement concerning impacts to wildlife impacts within the entire Newport Bay watershed should be substantiated by reference to cited studies.

Response: As indicated at the beginning of Section 3.1, the problem statement containing this discussion was taken from the RWQCB Staff Reports from July and October 1997 and reflect RWQCB staff's local knowledge and judgement.

Comment 2.11: Table 4 appears to set habitat acreages and provides no discretion for the Department of Fish and Game, Corps of Engineers, or others to propose changes to this habitat mix.

Response: The inclusion of numeric targets for habitat acreage distribution do not bar the ecological reserve's owners or other interested parties from proposing changes in habitat acreages. If the ecological reserve management plan containing these acreages is changed, it would probably be appropriate for the RWQCB to consider modifications to the numeric target in the future to account for those changes.

Comment 2.12: At 63,000 tons per year, the in-bay basin may reach -7 MSL much sooner than the 10 years provided for in the TMDLs.

Response: The RWQCB has indicated its plans to periodically review attainment of each numeric target. If the initial dredging frequency target of about once every 10 years is not met, it may be appropriate to consider the viability of more frequent dredging. If more frequent dredging is not viable, it may be appropriate to consider the need for more extensive sediment

source control activities to further reduce sediment loading to the watershed.

Comment 2.13: It should be recognized that no feasible source control options for fine sediment have been identified, and that the Bay is the only control measure available for such particles.

Response: Because this comment focuses primarily on TMDL implementation issues, no changes to the TMDL are warranted. However, we disagree with the general idea that no feasible source control methods are available to address fine sediments are available. A variety of effective fine sediment control management practices are available to address both urban and non-urban settings (See, e.g., U.S. EPA, *Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters*. EPA 842 B-92-002, 1993.**)**

Comment 2.14: The TMDL needs to recognize the financial resources required for sediment control measures and also meet any regulatory requirements for performing economic analyses of its consequences.

Response: As the TMDL Report notes, sediment control measures can be very costly to implement. However, the Clean Water Act requires TMDLs to be established at levels necessary to attain the applicable water quality standards. The Act does not require an economic analysis nor would the Act authorize a TMDL that would not attain water quality standards due to economic factors.

Comment 2.15: Because the sediment allocations are not completely accurate, the TMDL should include a clear statement that meeting the targets contained in Table 1 would obviate the need to meet the allocations contained in Table 2.

Response: We disagree. If the numeric targets for these TMDLs are met, including the 50% reduction target, the TMDL will be attained. If this result is attained through a different mixture of sediment source reductions or controls than planned through the load and wasteload allocations, it would be appropriate to revise the allocations accordingly.

Comment 2.16: The wasteload allocations proposed for NPDES stormwater permits should recognize the maximum extent practicable standard established by Clean Water Act Section 402(P)(3)(b).

Response: NPDES permits, including NPDES stormwater permits, must include effluent limits consistent with the assumptions and requirements of approved wasteload allocations (40 CFR 122.44(d)(1)(vii)). Development of effluent limits for individual stormwater permits will be determined at the time of permit issuance by the permitting authority.

Comment 2.17: The reference to 50% available storage capacity should be clarified to refer to in-channel sediment retention basins.

Response: We agree. The references have been changed to refer to "in-channel and foothill sediment retention basins."

Comment 3: City of Costa Mesa

Comment 3.1: Commenter requests a 30 day extension in the public comment period.

Response: See response to comment 2.1.

Comment 3.2: Commenter endorses comments made by County of Orange.

Response: Comment noted. See discussion of County of Orange comments above.

Comment 4: Defend the Bay

Comment 4.1: The commenter would like to ensure that "a reduction in loading to San Diego Creek" means not allowing excessive sediment into the Creek, and "a reduction in loading to Newport Bay" means not allowing excessive sediment into the Bay.

Response: We believe the TMDLs are intended to lead to such reductions.

Comment 4.2: Commenter is concerned that dredging could be viewed as an equivalent or alternative to true reductions in sediment loading. The TMDLs should consider the fact that nutrients attached to sediment and that these nutrients may be bioavailable if they sit in the Bay until the next dredging.

Response: The TMDLs establish maximum average annual sediment loading levels in total and for four land use categories for both the Creek and the Bay. The TMDLs do not specify the method of implementing these maximum loading levels. However, EPA endorses the general plan of implementation proposed by the Regional Water Quality Control Board. That plan provides for both sediment source reductions and reductions in sediment delivery from upstream sources and channels to downstream Creek and Bay locations through the use of periodic dredging. Although EPA has not conducted a detailed analysis of implementation options, a combination of sediment management practices appears to be needed to attain the relatively aggressive sediment reductions required by the TMDL. As a general principle, however, EPA believes that pollution prevention through source reduction is preferable to pollutant treatment or removal from water bodies.

Regarding the issue of nutrient attachment to sediment, if future monitoring and analysis indicate that a 50% reduction in sediment loading is inadequate to address beneficial use problems associated with phosphorous, it would be appropriate for the State to consider revisions to the sediment and/or phosphorous TMDLs.

Comment 4.3: Commenter requests that the TMDL address the Basin Plan requirement concerning prohibition of both suspended and settleable solids in amounts which adversely affect beneficial uses as a result of controllable water quality factors. The TMDL should control sediment loading at the source.

Response: EPA believes that implementation of the TMDL will result in compliance with applicable water quality standards, including the Basin Plan requirement mentioned by the commenter. The primary beneficial use issues of concern in the Newport Bay/San Diego Creek are associated with settleable solids. The TMDL focuses on settleable solids control. However, the TMDLs should also address suspended sediment issues by in carrying out an overall 50% reduction in sediment loading to the watershed. In addition, we note that the TMDLs focus on sediment loading in general rather than sediment of particular sizes, thereby ensuring that the sediment size fraction most likely to be carried as suspended sediment will be addressed. Also see response to comment 4.2 regarding sediment source control comment.

Comment 4.4: Commenter is concerned that there is no differentiation regarding the types of sediment to be controlled. A reduction of each sediment type, including sand, silt, clay, and organic material may be appropriate.

Response: EPA is unaware of local information concerning the relative importance of different sediment sizes in creating beneficial use impacts in the watershed associated with clean sediments. Therefore, the sediment TMDL Report does not distinguish between sediment sizes or types in establishing sediment loading targets, loading capacity, TMDLs, or allocations. If more information concerning the relative importance of different sediment size fractions becomes available in the future, it may prove feasible and useful for the Regional Water Quality Control Board to consider refining the TMDLs to reflect that new information in future TMDL revisions. Also see response to comment 4.3.